IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2193 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CO OP BANK LTD.THRO. CHIEF EXECUTIVE OFFICER

Versus

CHANDRAKANT DAHYABHAI PATEL

Appearance:

1. Special Civil Application No. 2193 of 2005

MR HARIN P RAVAL for Petitioner No. 1

MR AR THACKER for Respondent No. 1

MR AD OZA GOVERNMENT PLEADER for respondent No.3

MR KB TRIVEDI ADDI.ADVOCATE GENERAL

with MS SANGEETA VISHEN ASST.GOVERNMENT PLEADER

for Respondent No.2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: /05/2005

CAV JUDGEMENT

1. Rule. Learned advocate Mr.A.R.Thacker, waives service of notice of rule on behalf of respondent No.1. Mr.A.D.Oza, learned Government Pleader waives service of notice of rule on behalf of respondent No.3. Ms.Sangeet Vishen, learned AGp waives service of notice of rule on behalf of respondent No.2.

1.1 Gujarat State Cooperative Bank Ltd., petitioner has filed this petition with a prayer that this Court may be pleased to issue appropriate writ, order or direction in the nature of prohibition or mandamus, quashing and setting aside the impugned ex parte order dated 16th February 2005 passed by the Registrar's Board of Nominees, Ahmedabad Division, Ahmedabad below application Exh.5 in Lavad Suit No.170 of 2005. By the impugned order, the Board of Nominees has granted prayer contained in paragraph 8(A) of the Injunction Application filed by one Mr.Chandrakant Dahyabhai Patel, respondent No.1 herein. Respondent No.1 by his application has prayed that the election of the Chairman and Vice Chairman to be held in the meeting dated 16th February 2005 may not be continued because the petitioner and others have right to vote in this behalf and till that is decided, the said meeting will not be held and prayed to restrain respondents viz. The Election Officer & City Deputy Collector & Gujarat State Cooperative Bank Ltd. not to hold the meeting in this behalf. The petitioner has also prayed that this Court may be pleased to quash and set aside the impugned decision of respondent No.2, the Election Officer & City Deputy Collector dated 16th February 2005 as communicated through messenger at 12.10 hours on 16th February 2005. It is also prayed that direction may be given to respondent No.2 to convene the meeting of the Board of Directors of the petitioner-bank forthwith for the purpose of election of the Chairman and Vice Chairman from amongst the newly constituted Board of Directors of the petitioner-bank.

FACTS GIVING RAISE TO THIS PETITION:-

2. The fact giving raise to this petition are as under:

2.1 The petitioner is an Apex Cooperative Bank as provided for in Schedule appended to the Gujarat

Cooperative Societies Act, 1961 (the Act for short) and is a specified cooperative society as provided under Section 74C of the said Act. On 13/14 March 2001, the first meeting of the newly elected members of the Managing Committee of the petitioner society held under Section 145-Z(2) of the Act for holding elections of the Chairman and Vice Chairman held. Under Section 74-C(2) of the Act, the term of the members of the Managing Committee is three years from the date of holding of the first meeting.

2.2 It is the case of the petitioner that the Executive Committee of the petitioner vide resolution No.16-B(2) in its meeting dated 24th January 2004 passed a resolution resolving to return back the share capital of Rs.2,56,45,000/- (Rupees Two Crore Fifty Six Lacs Forty Five Thousand Only) subscribed by the State Government during the period of last 29-40 years. The Executive committee of the Board of Directors of the Bank took a decision to leave the Government guarantees in respect of all lands, loans of whatsoever nature extended by the State Government somewhere on 24th January 2004. In pursuance of the resolution of the Executive Committee of the Board of Directors of the petitioner Bank, above referred to the share capital returned back to the State Government somewhere on 4th February 2004. The election of the Board of Directors was required to be held and Election Officer and City Deputy Collector, Ahmedabad published election notice under Rule 6 of the Gujarat Specified Cooperative Societies Election to Committees Rules, 1982 for the purpose of preparation of list of voters vide publication of advertisement in Sandesh daily newspaper dated 2nd February 2004.

2.3 The Government of Gujarat in purported exercise of power under Section 161 of the Act exempted the specified cooperative societies falling under the categories mentioned in Section 74C from holding the election of the executive committees of such societies which were required to hold the elections of the executive committee under the provisions of Section 74-C read with Section 145A to L on or before 30th June 2004. On the basis of the said order, respondent No.2 herein postponed the process of holding the elections of the Board of Directors of the petitioner society by his order dated 4th February 2004. The term of the members of the managing committee of the petitioner bank was to expire somewhere on 13th March 2004 and in accordance with provisions of Section 145-D, (which provide conduct of Elections) the elections were required to be held one month before the date on which term of the managing

committee was due to expire. The Annual General Meeting of the petitioner bank vide resolution No.10 dated 3rd May 2004 proposed amendment to byelaw o.26-G along with amendment to various other byelaws.

2.4 Being aggrieved and dissatisfied with the said action, the petitioner had challenged the said action of the Election Officer in postponing the election and also for a declaration that the notification dated 4th February 2004, granting exemption to all the cooperative societies from holding the elections to the managing committee till 30th June 2004 by filing Special Civil Application No.2705 of 2004 before this Court. This Court (Coram: Jayant Patel, J.) by order dated 10th August 2004, by giving certain directions disposed of the matter. Respondents Nos.2 and 3 (i.e. Government authorities in this matter) were directed to initiate the process and to complete the election of the members of the Managing Committee of the petitioner as early as possible preferably within a period of three months from the date of receipt of writ of this Court. It was further directed that till the election is completed and the result is declared and newly elected body assumes the Office, the State Government shall not appoint the custodian under Section 74D of the Act on condition that the petitioner continues its regular activities of banking business and other day to day activities and shall not take any major policy decision referred to hereinabove.

2.5 Pursuant to the proposal being made for amendment of byelaws amongst other amendment to byelaw No.26-G, the Registrar, Cooperative Societies, State of Gujarat passed an order registering the amendment under Section 13 whereby, the said amendment is granted.

2.6 On 20th November 2004, a meeting of the Board of Directors of the petitioner was held where a resolution was passed, requesting the State Government that in view of the return of the share capital, abandonment of the Bank guarantees and in view of the amendment to byelaw No.26-G and considering the fact that as no financial interest of any nature whatsoever was existing of the State Government, State Government be requested not to appoint its representatives under Section 80(1) of the said Act.

2.7 Thereafter, respondent No.2 directed the petitioner somewhere on 1st December 2004 to publish the provisional list of voters and also declared the stages for preparation and publication of the final list of

voters. Respondent No.2 after hearing the objections instead of publishing the final list of voters as per the election programme issued the notice in daily newspaper dated 27th December 2004 containing his decision to postpone the hearing of objections till 12.00 hours.

2.8 Being aggrieved and dissatisfied with the said action, the petitioner filed Special Civil Application No.16287 of 2004 before this Court challenging the action of the Election Officer and for quashing and setting aside the order dated 16th December 2004. Meanwhile, respondent No.2 had published the final list of voters on 20th December 2004 and thereafter the election programme came to be published on 27th December 2004 and the election of the members of the Board of Directors of the petitioner bank was held on 28th January 2005 and the result thereof as provided under the provisions of Rule 31 was declared. The petitioner addressed a letter dated 23rd December 2004 to Secretary, Cooperative Department on behalf of the petitioner with a copy marked to the Registrar, Cooperative Societies, State of Gujarat, Gandhinagar, requesting State Government not to exercise powers under Section 80(1) of the said Act which provides bar to appoint Government Nominees.

2.9 As the petitioner apprehended that the State Government may appoint somebody on the Board of Directors of the petitioner society to get control over its management may exercise the power in the so called public interest under the provisions of sub section (2) of Section 80 of the Act filed Special Civil Application No.106 of 2005 before this Court somewhere on 7th January 2005.

2.10 The aforesaid Special Civil Application No.106 of 2005 came up for admission hearing during winter vacation on 7th January 2005 and after hearing the petitioner, this Court was pleased to issue notice making it returnable on 11th January 2005. On 11th January 2005, the Government authorities prayed for time and the same was granted by this Court for filing the affidavit in reply.

2.11 Thereafter, the declaration of the result of the members of the Board of Directors, the first meeting of the members of the Board of Directors is required to be held for the purpose of election of the office bearers viz. the Chairman and Vice Chairman from amongst the elected members of the Board of Directors of the petitioner bank. The respondent No.2, therefore, in purported exercise of power under the provisions of

Section 145-Z (which provides special provisions for Election of Officer of Specified Societies) of the Act issued the agenda notice on 28th January 2005 for the purpose of electing the office bearers viz. Chairman and Vice Chairman and the meeting for electing the Chairman and Vice Chairman of the petitioner bank was scheduled to be held on 16th February 2005.

2.12 As the petitioner bank was apprehending the appointment of the nominated Directors by the Government under the provisions of Section 80 of the Act and since above mentioned Special Civil Application No.106 of 2005 was listed for admission hearing before this Court on 15th February 2005, the petitioner had requested this Court to take up the matter for the purpose of hearing of prayer for interim relief in the said Special Civil Application. The learned AGP appearing in the matter had requested the Court to keep the hearing of the above mentioned Special Civil Application No.106 of 2005 on 16th February 2005, since the meeting was scheduled to be held on 11.30 A.M., the hearing of the above mentioned SCA was peremptorily fixed at 11.00 A.M. by this Court on 16th February 2005.

2.13 On 16th February 2005, the Additional Advocate General, Mr.K.B.Trivedi appeared in the above mentioned SCA for Election Officer and made a categorical statement before the Court to the effect that the Government is not contemplating to appoint its Nominees on the Board of Directors of the petitioner bank in exercise of the power under the provisions of sub section (2) of Section 80 of the said Act.

2.14 It may be noted that one Mr.Chandrakant Dahyabhai Patel, respondent No.1 herein filed Lavad Suit under Section 96 of the Act on 16th February 2005 before the Registrar's Board of Nominees, Ahmedabad Division, Ahmedabad for injunction against holding of the first meeting of the Board of Directors of the petitioner society for the purpose of election of its Chairman and Vice Chairman being Lavad Suit No.170 of 2005. Along with the suit, the respondent No.1 herein also filed application for interim injunction on the same day.

2.15 The Registrar's Board of Nominee, Ahmedabad Division, Ahmedabad on 16th February 2005 passed ex parte ad interim stay order in terms of paragraph 8(A) of the interim stay application which I have already set out earlier in my opening paragraph.

2.16 The learned advocate appearing for the petitioner

has specifically alleged that though scheduled time of the meeting is at 11.30 A.M. and though respondent No.2 was under an obligation to remain present at the place of the meeting prior to the scheduled time of the meeting or at least at the scheduled time and place as per the agenda notice on 16th February 2005, respondent No.2 did not remain present to preside over the meeting. On the same day, at about 12.10 noon, the respondent No.2 through his messenger had communicated his decision under the covering letter that respondent No.1 herein filed Lavad Suit No.170 of 2005 before the Registrar's, Board of Nominees, Ahmedabad Division, Ahmedabad and has prayed for stay of the meeting scheduled to be held on 16th February 2005 and that the Registrar's, Board of Nominees, Ahmedabad Division, Ahmedabad has granted stay upto 24th February 2005 and accordingly he is postponing the meeting. The said decision has been communicated at 12.10 hours on 16th February 2005, that is to say after the scheduled time of the meeting which was scheduled to be held at 11.30 A.M.

2.17 Being aggrieved and dissatisfied with the same, the petitioner has filed the present Special Civil Application before this Court challenging the order dated 16th February 2005 passed by the Registrar's, Board of Nominees, Ahmedabad Division, Ahmedabad below Exh.5 as well as challenging the subsequent order of respondent No.2 dated 16th February 2005. The petition was filed on 18th February 2005.

2.18 On 18th February 2005, this Court while issuing NOTICE, granted stay of the order dated 16th February 2005 passed by the Registrar's, Board of Nominees below Exh.5 in Arbitration Suit No.170 of 2005 and NOTICE was made returnable on 22nd February 2005.

2.19 Though respondents are served, respondent No.1 chooses not to appear on 22nd February 2005 and on request made by the learned AGP, the matter was adjourned. When the mater reached for hearing on 4th March 2004, an oral contention is made on behalf of the State of Gujarat through learned Additional Advocate General for impleading State of Gujarat as necessary and proper party. The said oral application was too objected by the learned advocate appearing for the petitioner. Learned advocate for the petitioner Mr.Harin Raval has made elaborate arguments and concluded with the aspect of joinder of State of Gujarat as necessary party on 4th March 2005. After conclusion of arguments on the said issue, the matter was adjourned to 7th March 2005. On 7th March 2005, the matter was heard for some time and

adjourned to 9th March 2005. On 9th March 2005 an affidavit in reply is filed and served on the petitioner in the above mentioned petition.

2.20 It may be noted that on 8th March 2005, an affidavit in rejoinder has also been filed by the petitioner in Special Civil Application No.106 of 2005, controverting the averments of the State of Gujarat as averred in affidavit in reply filed on behalf of the respondent No.1 - State in SCA 106 of 2005.

2.21 It may be noted that thereafter, ultimately, this Court has passed an order on 10th March 2005 to make the State Government as a necessary party as respondent No.3 i.e. the State of Gujarat may be considered as respondent No.3. Mr.A.D.Oza, learned Government Pleader appeared on behalf of respondent No.3. He has adopted the arguments of learned Additional Advocate General in this behalf.

2.22 Ultimately, on 14th March 2005 hearing took place. Thereafter, on 21st March 2005 further hearing took place and ultimately, on 22nd March 2005, hearing completed.

SALIENT PROVISIONS OF THE ACT ON WHICH LEARNED ADVOCATE APPEARING FOR THE PETITIONER HAS INVITED THE ATTENTION OF THE COURT:-

3. Before Mr.Harin Raval, learned advocate appearing for the petitioner made submissions, he has invited my attention to the following salient provisions of the Act in this behalf.

3.1 Section 2(2) provides definition of "bye-laws" means bye-laws registered under this Act and for the time being in force and include registered amendments of such bye-laws. Section 2(5) provides, "committee" means the committee of management, or other directing body, to which the management of the affairs of a society is entrusted. Section 2(13) provides definition of member, "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person, duly admitted to membership of a society after registration, and includes a nominal associate or sympathizer member. Section 2(14) provides definition of officer, "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws, and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member

of the committee, and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society. Section 2(17) provides, "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act; and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar.

3.2 Chapter VII of the said Act provides, Management of Societies. Section 73 provides final authority of society. Section 74 provides, Committee, its powers and functions. Section 74C provides;

"Provision for conduct of elections of committees and officers of certain societies and term of office of members of committees-(1) The election of members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter:-

(i) Apex societies mentioned in the Schedule and such other apex societies as the State Government may, by general or special order, published in the Official Gazette, from time to time specify in this behalf, having regard to financial position and share capital of such societies.

(ii) all District Central Co-operative Banks.

(iii) XXXXX

(iv) (a) XXXX
(b) XXXX

(v) XXXX

(vi) XXXX

(vi-a) XXXX

(vi-b) XXXX

(vii) XXXX

(2) When the election of all the members of the committee or any such societies held at the same

time, the members elected on the committee at such general election shall hold office for a period of 3 (three years) from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

(3) Notwithstanding anything in the bye-laws of such society, the committee or management shall be elected by a general body of members of the society and all other committees authorized by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committees shall be sub-committees of the committee of management, and shall be subordinate to it.

Provided that it shall be lawful for the State Government, -

(a) to nominate its representatives on a Committee of any such society under section 80, or

(by) to nominate the first Committee of Management of any such society where the bye-laws of such society so provide.

[Provided further that it shall be lawful for any body or authority to nominate its representative on a Committee of such society where the bye-laws of such society so provide."

3.3 Section 80 of the Act provides, power to appoint Government nominee -

"(1) Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the principal of and payment of interest on, debentures issued or loans raised by a society, [the State Government shall, notwithstanding anything contained in the bye-laws of such society, have the right to nominate three representatives on the Committee of such society], in such manner as may be determined by the State Government from time to time. The members so nominate shall hold office during the pleasure of the State Government, or for such period as may be specified in the order

by which they are appointed, and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the committee duly elected.

[Explanation - Any nomination of the Registrar or his nominee on the Committee of a society under the bye-laws of such society shall not be construed as nomination of the representative on that Committee in exercise of the right of the State Government under this sub-section]

(2) Where the State Government is of the opinion that having regard to the public interest involved in the operation of a society it is necessary or expedient so to do, it may nominate its representatives on the committee of such society as if the State Government had subscribed to the share capital of the society and the provisions of sub-section (1) shall, so far as may be, apply to such nomination."

3.4 Section 81 provides, supersession of committee. Section 96 provides, disputes to be resolved amongst the members which is included in Chapter 9, process for deciding dispute. Chapter 11A provides, elections of Committees and Officers of certain Societies. Section 145-A provides, application - All sections of this Chapter except section [145-Z] shall apply to elections to committees of societies belonging to the categories specified in section 74C. Section 145-B provides, definitions. Particularly Section 145-B(b) provides, "election" means election of a member or members of the committee of a specified society. Section 145-B(c) provides, "specified society" means a society belonging to any of the categories specified in section 74C. Section 145-C provides, time when election to be held. Section 145-D provides, conduct of elections.

3.5 Section 145-Z provides, special provision for election of officers of specified societies.

"(1) This section shall apply only to election of officers by members of committees of societies belonging to the categories specified in section 74C.

(2) After the election of the members of the committee or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its

bye-laws, but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

3.6 Section 160 provides, the power of the State Government to frame rules. Section 161 provides, power to exempt societies form provisions of Act.

3.7 In exercise of the said power, the Government has enacted Gujarat Cooperative Societies Rules, 1965. Rule 5 of the said Act provides, making of bye-laws. Rule 6 provides, amendment of bye-laws. Chapter 5 provides, property and funds of society. Rule 29 provides, investment of funds. Rule 30 provides 30 provides, restrictions on investment. Rule 31 provides, contribution to Education Fund :-

"Every Society which pays dividend to its members shall contribute towards the education fund of the Gujarat State Co-operative Union directly at the following rates."

Rule 32 provides, qualifications for the members of the committee.

3.8 It may be noted that in exercise of the said statutory power, the State Government has also framed bye-laws of The Gujarat State Co-operative Bank Ltd. bye-law 26 of the said bye-laws provides, constitution of the Board :-

"The business of the Bank shall be carried on and managed by a Board of Directors, as hereunder provided."

Clause (c) provides:

"One representative of industrial and other co-operatives whose paid-up share capital in the case of former is not less than Rs.5,00,000/- and as have contributed to the share capital of this bank to the extent of 1/20th of their paid-up share capital as on 31st March of the preceding year."

Clause (g) provides:

"The State Government shall have a right to nominate not more than three directors representing the State Government only when the

State Government has subscribed to the share capital or has guaranteed the repayment of the principal of and payment of interest on debentures issued or loans raised by the Bank."

Bye-law 28 provides, period of office of a director;

"A Director, nominated or elected, shall hold office until the next nomination or election by the electorate by which he was chosen."

SUBMISSIONS OF MR.HARIN P.RAVAL, THE LEARNED ADVOCATE APPEARING FOR THE PETITIONER:-

4. In view of the aforesaid statutory provisions, Mr.Harin Raval, the learned advocate appearing for the petitioner has made following submissions:

4.2 The learned advocate appearing for the petitioner submitted that Section 4 of the said Act provides that a society which has its object to promotion of economic interest or general welfare of its members or of the public in accordance with cooperative principles or a society established with the object of facilitating operation of any such society, may be registered under this Act.

4.3 He submitted that the term "cooperative principles" is no where defined in the Act, but according to the principles enunciated by the International Cooperative Alliance, there are cooperative principles, which are as under :-

(a) Voluntary Association.

(by) Democratic control.

(c) Limited interest on capital.

(d) Cooperation amongst cooperatives.

4.3A The learned advocate submitted that therefore, considering the important principles of democratic control and considering the fact that India is governed by Constitution of India, preamble whereof recommends democratic values. Therefore, could be no interpretation of any Statute made by any State Legislature in exercise of power conferred under the constitution to give a power or to interpret such a Statute to give status to nominate member higher than that of a democratically elected

member. Also in recognition of the principle of democratic control, strict interpretation of the Act in Statutory provisions conferred power upon State Government to nominate its representatives which is not in accordance with democratic process, should be construed.

4.4 The learned advocate submitted that in view of the fact that share capital is resolved to be returned vide resolution dated 24th January 2004 and is actually returned back to the State Government on 4th February 2004 which amount of share capital amounting to Rs.2,56,45,000/- is accepted without raising any objection till date, there is no share capital / contribution of the State Government. Similarly, all guarantees of all nature whatsoever have been vacated. He submitted that please refer to the Government resolutions produced in this behalf along with affidavit dated 23rd March 2005 as well as please refer to the communication of NABARD, vacating schematic guarantee earlier executed by the State Government in view of the fact that all guarantees have been vacated, there does not exist a single guarantee valid and subsisting.

4.5 The learned advocate submitted that all loans of all nature whatsoever extended by the State Government have been repaid back. In view of the above, there is no financial interest of the State Government in the petitioner bank and, therefore, none of the conditions precedent necessary to exist to confer powers upon State Government to exercise its right to nominate representatives on the committee of management of the petitioner Bank exists. Also the finances having come to an end, the nomination earlier made have ceased to exist, apart from the fact that the tenure of nomination has itself expired in view of completion of three years term.

4.6 Mr.Harin Raval, learned advocate appearing for the petitioner submitted that Section 74-C(3) of the said Act provides that notwithstanding anything in the bye-laws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorized by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee or management and all such committees shall be sub-committees of the committee of management and shall be subordinate to it.

4.7 He submitted that proviso to Section 74-C(2) provides that it shall be lawful for the State Government

to nominate its representatives on a Committee of any such society under Section 80. Section 80(1) of the said Act, after its amendment vide Gujarat Act No.23/92 as substituted by Gujarat Act No.14/83, confers powers on the State Government to nominate three representatives on the Committee of such society, if the following conditions are fulfilled.

(1) If the State Government has subscribed to the share capital of the society, directly or indirectly, through another society.

(2) If the State Government has guaranteed repayment of the principal of and payment of interest on debentures issued or loans raised by a society.

4.8 The learned advocate submitted that thus, only in the event of fulfillment of one or both of the above conditions that the State Government gets power to nominate three representatives on the Committee of such a society. He submitted that under Section 80(2) of the said Act, in the event of fulfillment of the following eventualities or conditions, the State Government has the power to nominate its representatives on the committee of such society.

(1) Having regard to public interest involved in the operation of the society.

(2) It is necessary or expedient to nominate representative on the committee of such society.

4.9 The learned advocate submitted that in case of nomination of representatives by the Government under Section 80 of sub-section (1) the following position emerges :-

(1) That in both the cases, nomination of Government representatives is on the date of such society.

(2) That it is only in the event of fulfillment of the conditions prescribed under sub-section (1) of Section 80 that the right of nominate would exist.

(3) Similarly it is only on fulfillment of the conditions prescribed under Section 80(2) that the right to nominate would exist.

(4) That in both the cases, the right to nominate representatives on such committee is of only

three representatives.

(5) Having regard to the terminology of Section 80(2), which provides that provision of Sub-section (1) of Section 80 shall so far as may be applied to such nomination, the following position emerges :-

(a) maximum three representatives of the Government can be nominated on the Committee of such a society. In both cases, nomination shall be in such manner as may be taken by the State Government from time to time.

(by) the members so nominated in both cases shall hold office during pleasure of Government or such period as may be specified in the order by which they are appointed.

(b.i) in both the cases, members nominated as representative on assuming office, shall have rights, duties, responsibilities and liabilities, as if he were member of the committee duly elected.

4.10 The learned advocate submitted that the above mentioned provision makes it clear that even in the matter of tenure of representatives nominated by the State Government under sub-section (1) or sub-section (2) of Section 80, they only have rights, duties, responsibilities and liabilities as if such a member nominated as a member duly elected. Therefore, the Act provides that the maximum tenure of an elected member is only three years, by no stretch of imagination could the tenure of members nominated under sub-section (1) or sub-section (2) of Section 80 can be beyond three years.

4.11 Learned advocate has relied upon the judgment of the Division Bench of this Court in the case of Gujarat State Marketing Co.Op. Federation Ltd. & Anr. Vs. State of Gujarat & Ors., reported in (2004) 3 GLR 2342. Particularly, he has relied upon paragraph 9, 9.2 and 9.4. Paragraph 9.4 of the said judgement reads as follows:

"The nominations made under Sec.80 of the Act are on the "committee" which is defined in Sec.2(5) as the committee of management or other directing body, to which the management of the affairs of the society is entrusted. Under the provisions of Sec.74 of the Act, the management of every

society is vested in a committee constituted in accordance with the provisions of the Act and the Rules and Bye-laws made thereunder. Since, nomination of members is contemplated to be made on such committee, the duration of such nomination or the term of such representatives on the committee, unless expiring or determined earlier, will be co-extensive with the life of the committee itself. Such nomination on the committee cannot last beyond the life of the committee. Since, the managing committee is required to be constituted in accordance with the provisions of the Act and the Rules and Bye-laws, the provisions thereof would be determinative of the life of the committee.

4.12 In view of the aforesaid observations, he has made following submissions:

4.13 The learned advocate submitted that Section 96 does not permit a Suit to be filed by a nominee of the State Government, who is nominated as a representative. That dispute under Section 96 can be instituted only if the parties to the dispute are amongst the categories specified in sub-clause (1) to (e) of sub-section (1) of Section 96. The respondent No.1 does not fall in any of the categories mentioned in sub-clause (1) to (e) of Section 96(1) and, therefore, there is a bar of jurisdiction on the Registrar's Board of Nominees to entertain a suit filed by respondent No.1, who admittedly was holding capacity of a representative of the Government appointed under Section 80(1) at the time of his appointment in the year 2001. Secondly, even if it were held that the Government representative under Section 80(1) of the Act could file a suit under Section 96 in view of the fact that the conditions mentioned in Section 80(1) of the Act having ceased to exist, a status of the respondent No.1 has also ceased to exist.

4.14 The learned advocate submitted that having regard to provisions of Section 96(2) of the said Act, only those disputes which are mentioned in Explanation I of Section 96(2) can be agitated by the Forum provided under Section 96, admittedly present dispute is not one which can be governed by any of the classes mentioned in Explanation I of Section 96(2).

4.15 The learned advocate submitted that injunction granted by the learned Board of Nominee has effect of preventing duly elected society from assuming office since unless first meeting of the newly elected members

of the managing committee is held, the newly elected members do not assume office. That this Court has repeatedly and constantly frowned upon any order passed by any authority or Court, which has the effect of restraining elected office bears from assuming office. This ex parte ad interim order also amounts to interfering with the right of the elected members to assume and occupy their office. The effect and purport of the order of the learned Nominee is to stay holding of the meeting which was for the purpose of electing office bearers. He submitted that this Court has constantly held that no such injunction would be granted even by this Hon'ble Court in exercise of powers under Article 226 or 227 of the Constitution of India. Therefore, also, order passed by the learned Registrar's Board of Nominee is without jurisdiction.

4.16 The learned advocate submitted that the learned Board of Nominee has no jurisdiction to entertain the suit filed by the respondent No.1 and it is patently lacking in jurisdiction to entertain dispute, inasmuch as respondent No.1 is not a person falling in any of the categories mentioned in sub-section (1) of Section 96, who can institute such a suit. Also, Board of Nominee has no jurisdiction to decide the purport/dispute raised by the respondent as it is not a dispute falling within the meaning of Explanation I to Section 96(2). Hence, the suit is without jurisdiction, even if averments contained in the plaint are perused by this Hon'ble Court.

4.17 The learned advocate submitted that the respondent No.1 has instituted suit by suppressing material and correct facts and by making false averments on oath. That the action of the respondent No.2 - Election Authority who was to preside over the meeting is illegal.

4.18 The learned advocate submitted that the respondent No.1 is not a necessary party within the meaning of Section 2(xiv) of the Act inasmuch -

(a) he is not a person elected or appointed by a society to any office of such society according to its bye-laws.

(by) he is not a Chairman, Vice Chairman, President, Vice President, Managing Director, Manager, Secretary, Treasurer, elected or appointed under the Act Rules or bye-laws.

(c) though as representative of the State Government, he could be reckoned at the time of his appointment and till it validly subsisted a member of the committee, he cannot be reckoned to be member of the committee appointed under the Act to give direction in regard to business of such society since he has no such power or authority under law as a member of the committee to give direction in regard to business of such society. Admittedly, the respondent No.1 is not a member falling within the definition of Section 2(xiii) defining "Member"

4.19 The learned advocate submitted that in view of the fact that Special Civil Application No.106 of 2005 is filed by this very petitioner, where necessary declarations are prayed for, there is no purpose of respondent, relegating the petitioner before the Board of Nominee for decision of injunction application after bi-partie hearing.

4.20 The learned advocate submitted that the injunction ex parte granted on 16th February 2005 was to remain in force only till 24th February 2005. That after 24th February 2005, there has been no extension of the ex parte ad interim order by the learned Registrar of Board of Nominee, Ahmedabad Division, Ahmedabad. The ex parte ad interim injunction dated 16th February 2005 has been stayed by this Hon'ble Court by its order dated 18th February 2005.

SUBMISSIONS OF MR.K.B.TRIVEDI, LEARNED ADDITIONAL ADVOCATE GENERAL APPEARING ON BEHALF OF RESPONDENT NO.2:-

5. On behalf of respondent No.2 - Election Officer, learned Additional Advocate General Mr.K.B.Trivedi with Ms.Sangeeta Vishen, learned AGP appeared.

5.1 Learned Additional Advocate General has also invited my attention to relevant provisions of Act and Rules in this behalf. He has relied upon the definition of Nominee which reads as follows:

"1. A person who is proposed for an office, position, or duty. 2. A person designated to act in place of another, used in a very limited way. 3. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others."

5.1A The learned Additional Advocate General has

relied upon the affidavit filed by one Mr.V.M.Sonvane, Dy.Secretary, Cooperation Department in this behalf.

5.2 The learned Additional Advocate General submitted that the State's guarantee of repayment of the sum of Rs.91,84,42,500/- by way of schematic guarantee to the NABARD in favour of the petitioner bank was never vacated and that therefore, the three nominees including the respondent No.1 so appointed in the Managing Committee of the petitioner bank under Section 80(1) continue to function till the Government recalls them. It is true that the Government resolutions submitted along with the affidavit of one Mr.Mukesh Patel, Chief Officer of the petitioner bank referred to the decision of the State Government in vacating various guarantees. However, the said resolutions were in respect of various other guarantees including conversion loan. The said Government resolutions do not apply so far as the schematic guarantee referred to above is concerned.

5.3 The learned Additional Advocate General submitted that whilst assuming without admitting that the petitioner bank had vacated the aforesaid guarantee unceremoniously and without consent of the State Government, then in that case also, it appears that the policy decision and/or action in this behalf i.e. for returning the aforesaid schematic guarantee was taken in the meeting dated 30th November 2004 of the Board of Directors which could not have been taken in view of clear prohibition flowing from the order dated 10th August 2004 passed by this Hon'ble Court (Coram: Mr.Justice Jayant Patel, J. in SCA No.2705 of 2004 filed by the very petitioner) wherein it was directed as under:

> "..... The State Government - respondent No.1 herein shall not appoint the Custodian under section 74-D of the Act on condition that the petitioner continues its regular activities of banking business and other day to day activities and shall not take any major policy decision referred to hereinabove."

5.3A The learned Additional Advocate General submitted that in view of the above, the aforesaid decision/action of the petitioner bank in allegedly vacating the Bank Guarantee is directly in contravention of the directions of this Hon'ble Court under the aforesaid order dated 10th August 2004 and that, therefore, on this very ground, even if it is assumed that the said schematic guarantee has been vacated by the petitioner bank, the alleged decision/action taken in that behalf after 10th

August 2004 i.e. on 30th November 2004, is void ab initio. However, the fact remains that the said schematic guarantee has not been validly vacated as discussed hereinabove.

5.4 The learned Additional Advocate General submitted that the averments of the petitioner bank to the effect that the aforesaid schematic guarantee of the Government was vacated much earlier prior to 10th August 2004 and that on 30th November 2004, the same was merely taken note of in the meeting of the Board of Directors of the petitioner bank do not inspire confidence. Despite the demand, the petitioner bank has thought fit not to furnish the details of the meeting held and resolutions passed in this behalf along with the copies of the resolutions taking and/or confirming such policy decision.

5.5 The learned Additional Advocate General submitted that the judgment cited on behalf of the petitioner bank rendered by this Hon'ble Court in the case of Gujarat State Marketing Co-operative Federation Vs. State of Gujarat, reported in 2005 (1) GLH 144, does not appear to be applicable to the present matter. In the said judgment, this Hon'ble Court has, at the very outset, observed as under:

> "These petitions are a group and heard together as they involve the common issue of the validity of sub-sec. (2) of S.80 of Gujarat Co-operative Societies Act, 1961....."

5.5A The learned Additional Advocate General submitted that under the circumstances, the observations of this Hon'ble Court in the aforesaid judgment made with reference to Section 80(2) of the said Act, cannot be relied upon by the petitioner bank for pressing its contention to the effect that the tenure of the respondent No.1 Nominee would be co-extensive with the life of the Managing Committee itself and that, therefore, such a nomination on the Committee had already outlived its tenure. It is reiterated that the observations of this Hon'ble Court in paragraph 9.4 of the said judgment are to be appreciated in light of the controversy which fell for consideration before this Hon'ble Court which was with reference to the Government Nominees being nominated under section 80(2) and not under Section 80(1) of the said Act like in the present case. In view of this, the Government Nominee nominated under Section 80(1) of the Act, would continue to be so at the pleasure of the Government, regardless of the fact

that the life of the erstwhile committee has already been over.

SUBMISSIONS OF MR.J.R.NANAVATI, THE LEARNED ADVOCATE APPEARING FOR RESPONDENT NO.1:-

6. On behalf of respondent No.1, learned advocate Mr.J.R.Nanavati appeared and he has made following submissions:

6.1 The learned advocate submitted that the order passed by the learned Nominee in Lavad Case No.170 of 2005 filed by the respondent No.1, Chandrakant Dahyabhai Patel dated 16th February 2005 is an ad interim order of injunction on Exh.6 for injunction and it is open for the petitioner to approach the Court of learned Nominee and file objections and get the matter decided by the learned Nominee and if the learned Nominee decides against the petitioner bank, the petitioner bank has remedy of filing revision application before the co-operative Tribunal. The petitioner bank cannot invoke extra ordinary jurisdiction of the Hon'ble High Court under Article 226 or 227 of the Constitution of India.

6.2 The learned advocate submitted submitted that paragraph Nos.2, 3, 4 and 8 of the plaint clearly show that the averments made therein and the reliefs asked for, the Court of learned Nominee alone has jurisdiction to entertain the Lavad Case and pass an ad interim order on the basis of averments. He submitted that nominee has jurisdiction to entertain the Lavad Suit on the basis of various averments made in the plaint and the petitioner bank cannot say that having regard to the plea taken by the petitioner bank in the Hon'ble High Court, the Nominee Court has no jurisdiction. He submitted that the initial jurisdiction of the learned Nominee depends upon the averments in the plaint and not on the basis of the plea of the bank in this Court. He submitted that as and when plea of the jurisdiction is raised before the Board of Nominee, the same will be decided after hearing the parties. But, at this stage, the learned Nominee has jurisdiction to grant interim relief and the proper course for the petitioner bank is to file a reply before the learned Nominee who would decide the point raised by the petitioner bank in accordance with law.

6.3 The learned advocate submitted submitted that the reliance was placed on the judgment in the case of Babumal Bhuramal Vs. Nandlal Shivram, reported in 1958 SC 677 paragraphs 7, 8 and 10 GLR 720 paragraph 2 and 8, and 1967 SC 369, in the case of Vashudev Vs. Happyhome

Cooperative Society. The aforesaid authorities shows that the averments in the plaint decide the initial jurisdiction of the learned Nominee under the Gujarat Cooperative Societies Act.

6.4 The learned advocate submitted submitted that the petitioner has contended that the respondent No.1 plaintiff has no right to file a Lavad Case before the learned Nominee having regard to the provision contained in Section 96 of the Gujarat Co-operative Societies Act. The learned advocate submitted that the respondent No.1 plaintiff is an "officer" within the meaning of Clause (a) of sub-section (1) of Section 96 and also a "nominee" under the said sub-section. The expression "officer" is defined in Section 2(14) of the Act and it includes the members of the Committee. The plaintiff respondent No.1 says that he is a member of the committee and also says that he is a "nominee" of the Government of Gujarat under Section 80(1) of the Act. Plaintiff - respondent is a Nominee of the Government as he has been nominated by the Government under Section 80(1) of the Act.

6.5 The learned advocate submitted that the nominee under sub-section (1) of Section 80 holds office during pleasure of the State Government or for such period as may be specified in the order. The State Government by order dated 13th December 2000 at page 80, has appointed the plaintiff-respondent No.1 till further orders at their pleasure and the plaintiff respondent No.1 was a member and continues to be a member and, therefore, the plaintiff respondent No.1 has right to file the suit as "Nominee" of the Government and that he is a "member of the Committee" and has a right to participate in the election which has been wrongly denied to him. The learned advocate submitted submitted that petitioner relies upon the provisions contained in Section 80(2) which is not applicable. The petitioner relies upon the judgment reported in 2004(3) GLR 2342 in the case of Gujarat State Marketing Co.Op. Federation Ltd. & Anr. Vs. State of Gujarat & Ors. The said judgment read as a whole and particularly paragraph 10 shows that the member appointed under Section 80(2) retires when the term of the committee comes to an end. The appointment under Section 80(2) does not provide like section 80(2) nomination at pleasure and the provisions regarding term of the member in Section 80(1) and 80(2) are different. The term of member appointed under Section 80(1) is at a 'pleasure' of the Government and term exists. The term of the member under Section 80(2) does not provide for term at pleasure of the Government like 80(1) and, therefore, this Hon'ble Court has taken the view in

judgment reported in 2004(3) GLR 2342 that in case of member appointed under Section 80(2) and his term expires with the term of the committee. The same is not applicable to the member appointed under Section 80(1) and the judgment of this Court reported in 2004(3) GLR 2342 is not applicable. The provisions contained in Section 74(C)(2) are applicable only to the elected member and cannot apply to the member appointed by the Government under Section 80(1) of the Act. The member appointed under Section 80(1) continues even after the expiry of the term of the committee at the end of three years because he is entitled to continue by the order of the Government and not as per provisions contained in Section 74(C)(2).

6.6 The learned advocate submitted submitted that the reliance placed on 16 GLR 1058 para 689, in the case of Krishna Gopal Joshi Vs. Annyonya Sahayyakari Mandali, Baroda, where this Hon'ble Court has held that election dispute falls within the purview of Section 96. This Hon'ble Court has also taken a view in the judgment reported in Gujarat Law Times 64-65 paragraph 29 that Nominee has power to issue interim injunction.

6.7 The learned advocate submitted that all the aforesaid questions has to be raised before the learned Nominee and the petitioner has no right to invoke extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

6.8 The learned advocate submitted that it is also contended that the plaintiff bank has committed breach of the order passed by this Hon'ble Court (Coram: Jayant Patel, J.) dated 10th August 2004 page 43, whereby in paragraph 5, the petitioner was directed not to take any major policy decision. The bank relies upon the policy decision in amending bye-laws. Bye-law No.96 refers to at page 52. He submitted that the so called decision of the bank of changing the bye-laws and also dealing with the bank guarantee is in violation of the order of the Hon'ble Court and, therefore, this Hon'ble Court will be pleased not to interfere under Article 226 of the Constitution of India.

7. The learned advocate appearing for the petitioner has reiterated various contentions. However, he has relied upon the additional affidavit filed by one Mr.Mukesh D.Patel, working as Chief Officer in this behalf. He has also stated that he may be permitted to adopt the affidavit in rejoinder filed in Special Civil Application No.106 of 2005 dated 7th March 2005. In

which, it has been stated that the share capital of the Government has been returned by the petitioner on 4th February 2004 and since then there is no contribution to the share capital by the State Government in the petitioner-bank. The said fact is very much within the knowledge of the deponent and still however, he has made the misleading statement. He has made averment that the guarantee is still continue. It was also stated that so far as the NCDC guarantee is concerned, the same has been vacated on 1st March 2004 and the necessary resolution has also been issued in this behalf on or about 19th November 2004. So far as the guarantee of NABARD is concerned, the same is also vacated respectively on 3rd February 2004, 3rd March 2004 and 15th March 2004. The requisite decision of resolution in this behalf has been issued on 22nd November 2004. This fact, though is very much in the knowledge of the deponent in this behalf. He has referred to the letter dated 15th March 2004 addressed to the petitioner bank, letter dated 21st April 2004 addressed by National Bank for Agriculture and Rural Development to the petitioner bank, acknowledging the receipt of FDRs of State Bank of Saurashtra and letter dated 18th March 2004 addressed by NABARD to the petitioner bank in which, it has been stated that they have no objection to allow refinance to their bank on pledging their FDRs of State Bank of Saurashtra in lieu of Government Guarantee, subject to certain terms and conditions mentioned therein. He has also relied upon the resolution of the Government dated 22nd November 2004 in which the Government has stated that the default guarantee of Rs.26.30 crores is required to be vacated and, therefore, necessary resolution in this behalf is passed and several other letters and Government resolutions. The learned advocate appearing for the petitioner after relying upon this, stated that the fact that there is no guarantee existed today and, therefore, the Government has no right to nominate any director under Section 80 of the Act.

CONCLUSION:FINDINGS:-

8. I have considered the facts and circumstances of the case. It may be noted that in this petition, the petitioner has prayed for issueance of appropriate writ, order or direction in the nature of prohibition or mandamus, quashing and setting aside the impugned ex parte order dated 16th February 2005 passed by the Registrar's Board of Nominees, Ahmedabad Division, Ahmedabad below application Exh.5 in Lavad Suit No.170 of 2005. The petitioner further prayed that direction may be given to respondent No.2 to convene the meeting of the

Board of Directors of the petitioner-bank forthwith for the purpose of election of the Chairman and Vice Chairman from amongst the newly constituted Board of Directors of the petitioner-bank.

9. As the petitioner has raised number of contentions, I have heard the matter at length. I have also noted down the contentions of learned Additional Advocate General Mr.K.B.Trivedi as well as Mr.J.R.Nanavati in this behalf. In view of the discussions made in the main petition and the rival contentions, before this Court exercising power, the Court has to consider the scope of Articles 226 and 227 of the Constitution of India in light of the facts and circumstances of the case. It may be noted that in this case, the petitioner has challenged ex parte interim order passed by the Board of Nominees, Ahmedabad. As the petition is invoking Article 227 of the Constitution of India, the Court has to consider when an alternative, equally, efficacious and convenient remedy povided under the Act is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It may be noted that in this case, the petitioner has contended his right to convene the meeting of the Board of Directors, so that he can be elected in this behalf. There is no question of infringement of fundamental rights. Even if the case of the petitioner is taken at highest level, then it is a question of infringement of only statutory rights. In view of the same, when the cooperative society Act prescribed the alternative, convenient, efficacious remedy under the Act for enforcement of that statutory right, the Court would not exercise its extra ordinary jurisdiction under Article 227 of the Constitution of India.

10. It may be noted that in this case, the petitioner has contended that he has returned back the guarantee given by the State of Gujarat and, therefore, the Government has not right to nominate any director under Section 80 of the Act on the other hand, the Government has disputed that fact. It may be noted that therefore, this petition raises disputed questions of fact. As the state is disputing the basic question of fact raised by the petitioner in this behalf. It is not the function of this Court to investigate into the case regarding facts in the proceeding under Articles 226 and 227 of the Constitution of India. Therefore, the matter, in situation like this, must be refer back to the fact finding body.

11. It may be noted that under Articles 226 and 227 of the Constitution of India, this Court has a wide jurisdiction. However, when this Court has to issue a writ of certiorari or prohibition, only the following principles the Court may consider to issue writ in this behalf:

1. when the body concerned proceeds to act without, or in excess of, jurisdiction, or

2. there is an error of law apparent on the fact of the record in the impugned decision of the body.

12. It may be noted that in this case, the petitioner, according to him, is a member of the society and has a right to file the suit before the Board of Nominee and, therefore, there is no jurisdictional error in this behalf. The Tribunal (i.e. Board of Nominee) has passed the discretionary order and if there is any error of law, the respondent (petitioner herein) can always point out to the Tribunal about the same. So that, the Tribunal can have bipartite hearing and can pass proper and reasoned order. This Court do not express any opinion on the merits of the matter or on the order passed in this behalf. It is very well known that, the Court exercising power of issue of writ of certiorari does not act in appellate jurisdiction but only in a supervisory capacity.

13. It is very well known that finding of fact recorded by the finding fact authority duly constituted for the purpose and for which ordinarily should be considered to have become final and cannot be disturbed with the Tribunal has passed ex parte interim order. It will be open for the respondent (petitioner herein), to point all these facts before the Board of Nominee in this behalf.

13.A I have also considered the Division Bench judgment of this Court in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. Vs. State of Gujarat, reported in 25(2) GLR 1244. If one examines that case also, then in that case on page No.1314, paragraph 78 only deals with Section 80(2) of the Act and the Court was not concerned with Section 80(1) of the Act. Paragraph 78 of the said judgment reads as follows:

"78. Sec.80, as it originally stood in the

principal Act, empowered the Government to nominate its representatives not exceeding three on the Committee of a society to the share capital of which the State Government has directly or indirectly subscribed or has guaranteed the repayment of the principal and interest on debentures issued of loans raised by such society. Two fold amendment has been made in sec.80; firstly, by empowering the State Government to nominate its representatives notwithstanding anything contained in the Bye-laws of such societies and, secondly, by inserting new sub-sec.(2) empowering the State Government to nominate the representatives on the committee of a society having regard to the public interest involved in the operation of such society it has been found necessary or expedient to do so as if the State Government had subscribed to the share capital of the society. We must reject the challenge to this new provision inserted by sub-sec.(2). The power is an enabling power which can be exercised only if the Government is satisfied that it is necessary or expedient to do so in the public interest. The number of nominees cannot exceed three since it has been specifically provided that the provision of sub-section (1) shall, so far as may be, apply to such nomination. The tenure of such nominated persons shall be as may be specified in the order by which they are appointed and, therefore, if this power is sought to be abused by the State Government, it can be always subject to challenge in the Court of Law. It does not curtail the right of association nor the right to carry on business or trade guaranteed under Art.19 (1) and (g) respectively. This provision, therefore, must be sustained.

14. The petitioner has also placed reliance upon the judgment of this Court in the case of Gujarat State Marketing Co.Op. Federation Ltd. & Anr. Vs. State of Gujarat & Ors., reported in (2004) 3 GLR 2342. This judgment squarely based upon Section 80(2) of the Act and it has nothing to do with Section 80(1) of the Act. However, it will be open for the petitioner to point out all these salient facts before the Board of Nominees in this behalf and it will be open for the Board of Nominee to consider these facts in this behalf.

14.A I have considered the submissions made by learned counsel appearing for the petitioner, Mr..K.B.Trivedi,

learned Additional Advocate General as well as learned Mr.J.R.Nanavati in this behalf. I have also considered various decisions cited by the parties in this behalf. It may be noted that in this case, the question is interpretation of Section 80(1) of the Act. The decisions in the cases of Amreli District Co-ooperative Sale & Purchase Union Ltd. & Ors. Vs. State of Gujarat and Gujarat State Marketing Co.Op. Federation Ltd. & Anr. Vs. State of Gujarat, cited by both the counsels relate to Section 80(2) of the Act.

14.B In my view, therefore, the Board of Nominee will have to consider the observation of this Court in the aforesaid judgments and also will have to consider as to whether the petitioner bank can press this contention to the effect that the tenure of respondent No.1 nominee would be co-extensive with the life of the Managing Committee itself and that, therefore, such a nomination on the Committee cannot last beyond the life of the Committee since, the erstwhile Committee had already outlived its tenure. The Board of Nominee will also have to consider both these judgments and, thereafter, decide this point. The Board of Nominee will also have to consider as to what is the position of the Government nominated under Section 80(1) of the Act whether he will continue to be so at the pleasure of the Government, regardless of the fact that the life of the erstwhile Committee has already been over. All these questions which have been raised by the petitioner will have to be considered by the Board of Nominee in this behalf in accordance with law and without being influenced by the order of this Court.

14.C In all facts and circumstances of the fact, the aforesaid petition has been filed against the ex parte interlocutory order passed by the Board of Nominee in the aforesaid Lavad Suit No.170 of 2005 which is pending for final adjudication. Under the circumstances, it would be in the interest of justice and fitness of things that the said Lavad Suit is adjudicated upon finally by the Board of Nominee on all counts. The Board of Nominee will consider all contentions raised by the petitioner and questions raised by the petitioner which have been made earlier, and will have to consider all the contentions raised by respondent Nos.1 and 2 in this behalf and after giving them opportunity of being heard and also if they desire to file written submissions, allow them to file the same and, thereafter, decide the status of respondent No.1 herein can be finally adjudicated upon and determined for the purpose of finding out as to whether he has right to continue as the Nominee of the State

Government in the Managing Committee of the petitioner bank as per Section 80(1) of the Act. In view of this, this Court would not like to exercise extra ordinary jurisdiction vested in it under Article 226 and 227 of the Constitution of India.

15. I have set out the averments made by the respondents in this behalf, in detail, which clearly controverts the fact set out by the petitioner and, therefore, there is clearly disputed question of fact raised therein and, therefore, I do accept the contention of the respondent No.2 that petition cannot lie in this behalf. I have also considered the averments made by respondent No.1 in this behalf and he has relied upon the judgment of the Hon'ble the Apex Court reported in 1958 and 1967 (supra) and other provisions of the Act. The jurisdiction based upon only a plaint filed by the petitioner in this behalf. If the respondent disputes the same, he is entitled to point all these facts before the Board of Nominees in this behalf. This matter has a very chequered history in this behalf and, therefore also, in view of the self-imposed restrictions of this Court, when this Court has to exercise jurisdiction with restrains and wisdom, this Court is of the view that this is not a proper case to exercise jurisdiction in this behalf and the petitioner may be relegated to the remedy provided under the law in this behalf.

16. In view of the above discussions, the petition is dismissed. The matter is remanded to the Board of Nominee. Rule is discharged with no order as to costs.

17. So far as Special Civil Application No.106 of 2005 is concerned, the same will be decidecd afterwords, as I have not heard the matter.

18. After the judgment is pronounced, learned advocate Mr.Champaneri for learned advocate Mr.Harin Raval states that the operation, implementation of the judgment of this Court be stayed for some time so that, he can appear before the Higher Forum. The same is granted upto 20th June 2005.

(K.M.Mehta, J.)

*Shitole